

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-5110

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE GARCIA ORELLANA,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T.S. Ellis III, Senior District Judge. (1:07-cr-00225-TSE-1)

Submitted: April 28, 2011

Decided: May 2, 2011

Before DAVIS, KEENAN, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mark Diamond, Richmond, Virginia, for Appellant. Neil H. MacBride, United States Attorney, Joseph V. Moreno, Special Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Garcia Orellana appeals the district court's order denying his motion to compel the Government to file a motion under Fed. R. Crim. P. 35(b). In his Rule 35(b) motion, Orellana claimed that the prosecutor had promised a 50% reduction based upon his substantial assistance and that the Government failed to file the motion. The district court, finding no record evidence of bad faith or unconstitutional motive, denied the motion without a hearing.

On appeal, Orellana asserts that the district court abused its discretion by failing to hold an evidentiary hearing to determine whether the Government was obligated to file a Rule 35(b) motion or whether its refusal was based upon an unconstitutional motive. We have reviewed the parties' briefs and the record on appeal and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Orellana, No. 1:07-cr-00225-TSE-1 (E.D. Va. Oct. 29, 2009). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED